

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PASCUAL J. DEPENA-RONDON : CIVIL ACTION

v. :

JOHN THOMAS, et al. : NO. 07-3370

REPORT AND RECOMMENDATION

THOMAS J. RUETER
United States Magistrate Judge

October , 2007

Presently before the court is a pro se petition for a writ of habeas corpus.

Petitioner is presently incarcerated at the State Correctional Institution at Chester, Pennsylvania.

Petitioner challenges his convictions for delivery of a controlled substance, criminal conspiracy to deliver a controlled substance and possession with intent to deliver heroin, which occurred in 2004 in the Court of Common Pleas for York County, Pennsylvania. (C.P. York, No. L 172623-3--2004.) The York County Court sentenced petitioner to five years imprisonment. (Petition at ¶ 4.)

The court respectfully recommends that the petition be transferred to the United States District Court for the Middle District of Pennsylvania because that is the place where petitioner was convicted, the records relating to his conviction are stored, the witnesses are located and the prosecuting authority is located. Under 28 U.S.C., Section 2241(d) petitioner may bring his application for a writ of habeas corpus “in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application.” This statute gives the district court wherein an

application is filed the discretion to transfer the application to the other district court for hearing and determination. Id.

The Third Circuit Court of Appeals has held that ordinarily a district court should transfer a habeas corpus proceeding relating to the validity of the petitioner's conviction from the district of confinement to the district of sentencing as such would be in furtherance of the convenience of the parties and witnesses. See In re Nwanze, 242 F.3d 521, 526 n.2 (3d Cir. 2001).

For all the above reasons, the court makes the following

RECOMMENDATION

AND NOW, this day of October, 2007, the court respectfully recommends that the petition for a writ of habeas corpus be **TRANSFERRED** to the United States District Court for the Middle District of Pennsylvania.

BY THE COURT:

/s/ Thomas J. Rueter
THOMAS J. RUETER
United States Magistrate Judge